

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CURTIS M. JOHN-CHARLES,

Petitioner,

No. CIV S-05-0175 MCE GGH P

vs.

STATE OF CALIFORNIA, et al.,

Respondents.

ORDER

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Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 15, 2005, the court recommended that this action be administratively stayed pending petitioner's exhaustion of additional claims in state court. On March 4, 2005, petitioner filed objections stating that he was not sure whether he would be able to exhaust his claims.

On April 6, 2005, the court ordered petitioner to inform the court whether he wanted to administratively stay this action or proceed with the exhausted claims only. The court ordered that if petitioner did not respond to the order, the findings and recommendations would be submitted to the district court. Twenty days passed and petitioner did not respond to the April 6, 2005, order.

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1 In Rhines v. Weber, ___ U.S. ___, 125 S.Ct. 1528 (2005) the Supreme Court
2 recently held that a habeas petition may only be stayed if the petitioner can show good cause for
3 his failure to exhaust his claims first in state court. Pursuant to Rhines, in order for this action to
4 be administratively stayed, petitioner must show good cause for his failure to exhaust all of his
5 claims in state court before filing his federal petition.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The findings and recommendations filed February 15, 2005, are vacated;
- 8 2. Within thirty days of the date of this order, petitioner shall file further briefing
9 addressing why he failed to exhaust all of his claims in state court before filing this action; if
10 petitioner does not respond to this order, the court will recommend dismissal of this action on
11 grounds that it contains a mixed petition.

12 DATED: 6/30/05

13 /s/ Gregory G. Hollows

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15 GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

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